



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Introduced: **02/22/05**

Bill No: **SB 610**

Tax: **Property**

Author: **Machado**

Related Bills:

BILL SUMMARY

This Board of Equalization sponsored bill makes corrective changes to the welfare exemption to:

- Clarify the documentation required when an organization receiving the welfare exemption allows other tax exempt organizations to hold weekly meetings at their facilities without jeopardizing the property's exempt status.
- Expressly provide that a governmental entity may be a member of a limited liability company for purposes of the welfare exemption.

ANALYSIS

Current Law

Charitable Use - Meetings Held by Other Nonprofits. In 2003 legislation was enacted to improve the joint administration of the welfare exemption by the Board of Equalization (Board) and local county assessors. To eliminate the prior duplication of effort, duties were separated between the functions of organization eligibility, which is determined by the Board, and qualifying uses of property, which is determined by the assessor. In addition, it simplified the welfare exemption filing process by reducing the amount of paperwork nonprofits file annually, especially for those owning property in multiple counties. Nonprofit organizations that own property now apply to the Board for an "organizational clearance certificate" which is granted if the nonprofit meets the organizational requirements for the welfare exemption. This certificate is filed with the assessor of the county where the property is located and indicates the organization is eligible for the exemption provided it uses the property for qualifying purposes. Previously, a variety of documents such as articles of incorporation, financial statements, and tax exemption letters were required to be filed in duplicate in every county where the nonprofit owned property.

Related to this bill, the law generally allows a nonprofit organization that owns property receiving the welfare exemption to allow *other* nonprofit organizations (those exempt under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code) to use their facilities to hold meetings no more than once per week without jeopardizing the tax exempt status of the property. The streamlining legislation inadvertently changed the documentation related to the use of a property for weekly meeting purposes by other nonprofit organizations to the organizational clearance certificate. Previously, only a copy of a valid tax exemption letter from the meeting holder was necessary.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Limited Liability Companies. Beginning January 1, 2005, the law allows property owned by a limited liability company (LLC) in which the members are qualifying organizations to qualify for the welfare exemption. Property Tax Rule 136, also effective January 1, 2005, provides that a governmental entity can be a qualifying member of a LLC.

Proposed Law

Charitable Use - Meetings Held by Other Nonprofits. This bill would amend Section 214 (a)(3)(D) to reinstate the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use their property to hold weekly meetings without jeopardizing their tax exempt status. This bill would require that a copy of a valid tax exemption letter be provided rather than a copy of an organizational clearance certificate.

Limited Liability Companies - Government Entities. This bill would amend Section 214.8 to include governmental entities as qualifying members of a LLC, consistent with Property Tax Rule 136. This bill would also insert and move the phrase "limited liability companies" in various locations in Section 214 to correct omissions and misplacement of the phrase.

Background

Charitable Use - Meetings Held by Other Nonprofits. AB 3022 (Stats. 1990, Ch. 161, Klehs) added subparagraph (D) to paragraph (3) of subdivision (a) to Section 214 to allow weekly meetings held by 501(c)(3) and (c)(4) tax exempt organizations to be an acceptable use of property receiving the welfare exemption.

Streamlining Welfare Exemption Administration. SB 1062 (Stats. 2003, Ch. 471, SR&T Committee) amended statutory provisions relating to the welfare exemption to streamline the administration of the exemption by eliminating duplicative review functions performed by the assessors and the Board. These changes were effective on January 1, 2004.

Limited Liability Companies. AB 3073 (Stats. 2004, Ch. 354, SR&T Committee) amended statutory provisions relating to the welfare exemption to allow an exemption to qualifying LLCs and their properties. Revenue and Taxation Code Section Code 214 (k) specified that the Board adopt a regulation to specify the ownership, organizational, and operational requirements for LLCs. The Board adopted [Property Tax Rule 136](#) effective January 1, 2005. It specifies that a governmental entity is a qualifying member of a LLC for purposes of qualifying for the welfare exemption. It reads, in pertinent part:

(b)(2) QUALIFYING ORGANIZATION. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities under subdivision (d). A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under

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section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.

COMMENTS

1. **Sponsor and Purpose.** The Board is sponsoring this bill as a housekeeping measure to correct technical deficiencies in existing law.
2. **Allowing other nonprofits to use a facility to hold weekly meetings is an acceptable charitable use of a property receiving the welfare exemption.** Requiring the meeting holder to provide an “organizational clearance certificate” was an unintended drafting error in the streamlining legislation of 2003. If followed, it would create additional paperwork filing requirements on a nonprofit that does not own property but instead only uses a property owned by another nonprofit that does hold an organizational clearance certificate. Additionally, 501(c)(4) tax exempt organizations are not able to obtain an organizational clearance certificate since only 501(c)(3) tax exempt organizations are eligible. This bill is consistent with prior statutory requirements and current administrative practice.
3. **A government entity can be a member of an LLC for purposes of qualifying for the welfare exemption.** In developing Property Tax Rule 136 it was found that some local governments have entered into joint ventures with nonprofit organizations to own and operate property. Each member of the LLC, the local government and the nonprofit, is eligible for a property tax exemption if they own the subject property separately, either as government owned property or welfare exemption property, respectively. Property Tax Rule 136 was drafted to expressly recognize these joint ventures and this bill makes conforming amendments to Section 214.8.
4. **Suggested technical amendment to reverse annual maintenance of the code amendment.** Research into this bill has revealed an unintentional substantive amendment to Section 214 by an annual maintenance of the code bill. SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the maintenance of the code bill for 2001, substituted the word “of” for “or” in the last sentence of subparagraph (D) of paragraph (3) of subdivision (a) of Section 214. Previously the sentence read “The owner *or* the other organization shall also file with the assessor...” and now it reads “The owner *of* the other organization shall file with the assessor...”. Usually, there is little or no direct contact between the assessor and a meeting holder (i.e., “the other organization”) because they are not required to file an annual welfare exemption claim. In reviewing the claim filed by the nonprofit owner of the property, the assessor verifies that the property is used exclusively for charitable purposes and it is in this connection that a tax exempt letter from the meeting holder may be required. The tax exempt letter could be obtained from *either* the meeting holder or the property owner – who likely requires a copy of the letter for its files as a condition of allowing the use of their property for meetings so it can protect its tax exempt status. Consequently, the following amendment is suggested:

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The owner of or the other organization shall file with the assessor a copy of a valid, unrevoked letter or ruling from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

5. **Chaptering Out Potential.** AB 1614 (Klehs) also amends Section 214 of the Revenue and Taxation Code.

COST ESTIMATE

This bill would not result in any additional costs as it reflects current administrative practice or regulatory law.

REVENUE ESTIMATE

This bill has no revenue impact.

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